IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24306 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DINESHBHAI DAHYABHAI PATEL & 1 - Petitioner(s)
Versus
DANDY VALVE MANUFACTURING CO. & 2 - Respondent(s)

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Appearance :
MR RN SHAH for Petitioner(s) : 1 - 2.
MR PREMAL R JOSHI for Respondent(s) : 1 - 3.
MR DEVAN M DESAI for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 07/05/2007

ORAL JUDGMENT

1.The Petitioners / original defendants have filed this Petition under Article 227 of the Constitution of India, praying for quashing and

setting aside the orders passed by the Court below, under Section 11(4) of the Bombay Rent Act (for short “the Rent Act”) and also praying for the stay, during the pendency of this Petition, not to proceed further with the HRP Suit No. 213 of 1997 pending in the Court of Small Causes Court, at Ahmedabad.

2. Initially the Petitioners have filed Civil Revision Application No. 1332 of 2001. By virtue of a preliminary objection raised by the respondents to the maintainability of the Civil Revision Application, either under Section 29(2) of the Rent Act or under Section 115 of the Civil Procedure Code (for short “the Code”), the said Civil Revision Application was ordered to be converted into Special Civil Application, upon a request made on behalf of the Petitioners.

3. It is the case of the Petitioners that the Respondents / original plaintiffs filed HRP Suit No. 213 of 1997 (for short “the Suit”) against the present Petitioners / original Defendants for recovery of possession of the suit premises and for recovery of arrears of rent and also for permanent injunction against the transfer, subletting or assigning the premises to any third party. The present petitioners have resisted the said Suit by filing written statement as exh.20, by contending, inter alia, that the respondents / plaintiffs are not entitled to file the said Suit to recover possession and arrears of rent as there is no

relationship of land-lord and tenants as alleged nor rent claims of standard rent, and the petitioner no.2 being Private Limited Company, petitioner no.1 is not liable to pay the alleged rent of the suit premises. It was also resisted on the ground that the Rent Court has no jurisdiction in view of the provision of Section 11(4) of the Rent Act.

4. During the pendency of the said Suit, the respondents / plaintiffs filed an application under Section 11(4) of the Rent Act and further filed an application exh.42 seeking direction from the trial Court against the petitioners / defendants to deposit due amount of arrears of rent. It was contended by the petitioners / defendants that such an application under Section 11(4) of the Rent Act is not maintainable, and in support of this case, the petitioners / defendants have filed an application exh. 49 seeking direction to produce documents so as to establish that there is no relationship of land-lord and tenant and Rent Court has no jurisdiction to entertain such Suit. The learned Small Causes Court Judge, Ahmedabad has passed an order below application exh.42 on 28.2.2001 whereby the application exh. 42 was allowed and the petitioners / defendants were directed to deposit a sum of Rs.6,80,000/- in the Court on or before 1.5.2001, failing which, other orders would be envisaged. The petitioners / defendants were also directed to deposit Rs.8000/- per month regularly into

Court, from 1.3.2001 onwards.

5. Being aggrieved by the said order, the petitioners / Defendants filed Civil Revision Application before the Appellate Bench of the Small Causes Court, Ahmedabad and the said Civil Revision Application was rejected by the Appellate Bench of the Small Causes Court, Ahmedabad vide its order dated 6.8.2001. It is this order which is challenged in the present Special Civil Application before this Court.

6. Mr. R.N.Shah, the learned advocate appearing for the petitioners has submitted that the judgment and orders of both the Courts below are contrary to law, against the provision of statutes and the evidence on record. He has further submitted that application exh.42 filed by the respondents / plaintiffs invoking the provision of Section 11(4) of the Rent Act is not maintainable. He has further submitted that both the Courts below should have rejected the application exh.42 by holding that the ingredients required for invoking the provision of Section 11(4) of the Rent Act are not satisfied in the present case and when the Suit itself is not maintainable, the question of invoking Section 11(4) of the Rent Act does not arise. He has further submitted that before deciding the application exh.42, both the Courts should have allowed the application exh.49 preferred by the petitioners / defendants which is very much necessary for deciding the Suit as well as application exh.42, as in absence of

documents mentioned in the application exh.49, the Court cannot proceed further either with the Suit or under Section 11(4) of the Rent Act. He has further submitted that the Suit filed against the petitioner no.2 Company which is not in existence since 12.9.1996, cannot be proceeded further and no order can be passed against the dead entity. He has further submitted that the Suit filed by the respondents / plaintiffs is not maintainable on the ground that the partnership is not in existence and all the partners have not been impleaded as parties - plaintiffs in the Suit. He has further submitted that the petitioner no.1 is the partner in the respondent no.1 – partnership firm. He is impleaded as a party only because he is Director of the petitioner no.2 – Company. No liability can be fastened on the Director of the Company. He has further submitted that the respondent / plaintiff is a partnership firm and a Suit for dissolution is filed prior in point of time and unless and until the disputes between the said partnership firm are decided the present Suit filed by the respondents / plaintiffs in the name of the partnership firm cannot be proceeded further. He has further submitted that in absence of partner, namely, Gitaben Sanabhai, the Suit filed is not maintainable. He has further submitted that the alleged demand of rent is not actually the rent within the meaning of the Rent Act. When the amount is to be recovered for the purpose of use of the premises as well as machinery etc and in

absence of any decision on the said dispute, no order can be passed invoking the provision of Section 11(4) of the Rent Act. He has further submitted that the petitioners / defendants have not paid any rent nor it was demanded from them despite the fact that the rent note was allegedly executed in the year 1984. He has further submitted that the alleged rent note was not admissible in evidence as it was neither executed on valid stamp paper nor it was acted upon by the parties at any point of time. He has further submitted that before invoking the provision of Section 11(4) of the Rent Act for the purpose of recovery of rent, the standard rent has to be determined first, and the standard rent of the premises in any case does not exceed Rs.375/- per month. When the standard rent is not more than Rs.375/- per month, both the Courts have grievously erred in determining the standard rent at Rs.8000/- per month. He has further submitted that the claim made by the respondents / defendants is barred by limitation and hence the orders passed by the Courts below on an application under Section 11(4) of the Rent Act are not tenable at law and they deserve to be quashed and set aside.

7. In support of his submission that the Courts below have no jurisdiction to decide an application under Section 11(4) of the Rent Act, Mr. Shah has relied on the decision of this Court in the case of (MESSERS) GANESH CORPORATION V/S GUJARAT VIDYUT BOARD AND OTHERS,

2006(3) G.L.H. 708, wherein it is held that; *when the trial Court had no jurisdiction to entertain or decide the suit, then, it could not proceed to decide on the merits of the matter. It was obliged to act in act in accordance with R-10 of O-VII of the Code and should have asked for return of the plaint*. Mr. Shah has further submitted that non-deposit of the amount as directed by the Courts below would not result into striking off the defence automatically. As a matter of fact no such directions are issued in the impugned order. For this purpose he relied on the decision of this Court in the case of LAXMANDAS CHELARAM V/S HEMDAS HAUROMAL, 1984 G.L.H. 462, wherein it is held that; *Every litigant is entitled to a fair trial and a fair trial envisages an opportunity to make a defence and the trial of a case on the defence. The stringent provision in Section 11(4) is intended as a deterrent to a tenant who fails to deposit what is determined by the Court by way of an interim measure as "Standard rent" payable by him. Even so, the Act itself makes a provision by way of safeguard to relieve a litigant of the disastrous consequences that may befall on him, perhaps by reason of sheer inability to comply with the order of deposit. The provision has to be understood and applied in its true spirit, viewing it as a deterrent provision and, at the same time, assuring all safeguards envisaged by the Section to the tenant. These safeguards include a clear notice by the order of the Court that, if a tenant fails to comply with the order directing to deposit within the time specified*

or within such further time as may be allowed by the Court, the tenant will not be entitled to appear in or to defend the suit except with the leave of the Court. In such an event, he knows the consequences of his default. A mere direction to make a deposit within a particular time does not visit the consequence of the defence being struck off unless it be that there is a further direction by the Court that this be done if compliance is not made within a time to be specified. In that event, a tenant, unable to comply, has an opportunity to show that for specified reasons he has not been able to make the deposit and still he may be relieved of the consequence of the order. Where a Court does not pass an order that failure to deposit within a specified time will result in the consequence of the defence being struck off, there can be no order striking off the defence for reason of non deposit. That would be to go against the express language of the statute and to seriously infringe the safeguard envisaged against the application of the stringent provision in Section 11(4) of the Act.

8. Based on the above observations, Mr. Shah has submitted that in the present case also the Court has not passed any order to the effect that failure to deposit the amount as directed by the Court would result into striking off the defence. He has, therefore, submitted that no such direction should be issued by this Court in the present petition.

9. Based on the aforesaid submissions, on facts as

well as in law, and relying upon the judgments cited at bar, Mr. Shah has submitted that the orders passed by the authorities below deserve to be quashed and set aside and the petition be allowed accordingly.

10. Mr. Premal Joshi, the learned advocate appearing for the respondents / plaintiffs on the other hand has strongly submitted that both the Courts below have given concurrent findings of fact and such concurrent findings of fact cannot be disturbed while exercising the powers under Article 227 of the Constitution of India. For this purpose he relies on the decision of the Hon'ble Supreme Court in the case SUGARBAI M. SIDDIQ AND OTHERS V/S RAMESH S. HANKARE (DEAD) BY LRS., (2001)8 SCC 477, wherein it is held; *In an application under Article 227 of the Constitution, the High Court has to see whether the lower court / tribunal has jurisdiction to deal with the matter and if so, whether the impugned order is vitiated by procedural irregularity; in other words, the Court is concerned not with the decision but with the decision making process. On this ground alone the order of the High Court is liable to be set aside.* He further relies on the decision of the Hon'ble Supreme Court in the case of OUSEPH MATHAI AND OTHERS V/S M. ABDUL KHADIR, (2002) 1 SCC 319, wherein it is held that; *Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which the High Court exercises the jurisdiction but no corresponding right is*

conferred upon a litigant to invoke the jurisdiction under the said article as a matter of right. In fact power under this article casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party. No such position is found in the present case which justifies exercising powers under Article 227 of the Constitution. He further relies on the decision of the Hon'ble Supreme Court in the case of ESSEN DEINKI V/S RAJIV KUMAR, (2002) 8 SCC 400, wherein it is held that; *Exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature. It is so exercised in normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of natural justice, to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the courts below. The finding of fact being within the domain of the inferior tribunal, except where it*

is a perverse recording thereof or not based on any material whatsoever resulting in manifest injustice, interference under the article is not called for.

11. Based on the aforesaid decisions, Mr. Premal Joshi has strongly urged that there is no lack of jurisdiction nor any violation of principles of natural justice. The findings recorded by the Courts below cannot be said to be perverse and hence, this Court should not exercise its supervisory power under Article 227 of the Constitution of India and therefore, petition deserves to be dismissed.

12. Apart from the maintainability of the petition, Mr. Joshi has addressed the Court even on merits and submitted that there is no infirmity or illegality in the orders passed by both the Courts below. He has submitted that the learned Small Causes Court Judge has rightly allowed the application preferred by the respondents plaintiffs under Section 11(4) of the Rent Act and the revision application filed there against was also rightly rejected by the Appellate Court. He has submitted that registered notice dated 9.07.1996 was served on the petitioners as provided under Section 12(2)(a) of the Rent Act. But the petitioners have not cared even to reply to the said notice. He has further submitted that rent note dated 17.4.1984 between the petitioners and the respondents is filed in the trial Court in which the petitioners have signed the said document and have agreed to abide by

the terms and conditions stated therein. He has further submitted that the respondent no.1 is a partnership firm and the respondent nos. 2 and 3 are its partners. The present petitioner no.1 / original defendant is a company incorporated under the Companies Act, 1956 and the petitioner no.2 is Director of the said Company. The petitioner no.2 is not joined in his individual capacity. The Suit was not filed by one partner against the another partner as contended. He has further submitted that the Appellate Court has rightly held that it has jurisdiction to decide the subject matter and the bar of Section 6 of the Rent Act does not come in the way of the respondents / plaintiffs. However, the question of jurisdiction is still to be decided at the time of trial of the Suit, and the only question which is required to be determined for the purpose of deciding the respondents / plaintiffs application exh. 42 is, whether there exists relationship of land-lord and the tenant between the parties and the Appellate Court has rightly relied upon the rent note produced at exh.36/2. He has further submitted that while rejecting the application exh.49 moved by the petitioners / defendants for production of documents, the trial Court has rightly come to the conclusion that looking to the pleadings and the facts of the case, the documents called for by the respondents / defendants were not relevant for the purpose of deciding the subject matter or the suit as well as for deciding application exh.42 given under Section 11(4) of

the Rent Act. He has further submitted that various contentions raised and statements made in the various grounds of the revision application which was subsequently converted into Special Civil Application are wrong, illegal and without any basis. Both the Courts below have appreciated and considered all the contentions, and therefore, the present petition should not be entertained by this Court.

13. After having heard the learned advocates appearing for the respective parties and after having gone through the impugned orders passed by both the Courts below and the submissions made before this Court, the Court is of the view that since there is concurrent findings of fact given by the Court below, it is not just and proper for this Court to interfere in the said order, especially when the Suit is still pending before the trial Court. The grounds urged and the contentions raised were also urged before the Courts below and after proper appreciation of facts and in light of the statutory provisions and decided case law, both the Courts below have come to the right conclusion, which cannot be interfered with while exercising powers under Article 227 of the Constitution of Inida. The decisions cited before this Court in support of the submissions of the petitioners are not applicable to the facts of the case. Even with regard to jurisdiction, the trial Court has not come to the conclusion that it had no jurisdiction. The issue was kept open and it

is to be decided at the time of final disposal of the Suit. There is no dispute about the fact that the respondent / plaintiff is a partnership firm. It is true that the Suit for dissolution of the partnership firm is pending but Suit for recovery of rent as well possession of the Suit property is certainly maintainable. The present petitioner no.1 is impleaded in the Suit in its capacity as a Director. Even if he is a partner in the partnership firm, it cannot be said that any recovery is sought to be enforced against him qua his capacity as partner in the partnership firm. The ground raised regarding time barred debt is properly considered by the trial Court and only the admissible debt was taken into consideration and direction to deposit the amount is also restricted to that effect. The quantum of standard rent as decided by the trial Court cannot call for any interference by this Court. Considering all the contentions raised before this Court, the Court is of the view that there is no substance or merits in the petition. It is made clear that the Court has not expressed any opinion on the ground with regard to jurisdiction, as the Suit is still pending. The Court, therefore, dismisses this petition only on the ground that the powers exercisable by this Court under Article 227 of the Constitution are very restricted and the facts of the present case do not warrant the Court to exercise such powers. The petition is therefore dismissed. Rule is discharged without any order as to costs.

(K.A.Puj,J)

Jayanti*